

OPINION
59-59

July 16, 1959 (OPINION)

COUNTIES

RE: Memorials - Memorial Fund - Expenditure to Complete Building

I have your letter of July 9, 1959, in which you request an opinion on the question as to whether or not the board of county commissioners of your county is justified in appropriating a sum of money out of the memorial fund for the purpose of completing a school gymnasium. Apparently, the building in question was erected nine years ago and is still in a state of incompleteness. Some of the funds to be appropriated would be used for the repair of the gymnasium.

I call your attention to section 11-3201 of the 1957 Supplement to the N.D.R.C. of 1943 which reads in part as follows:

The board of county commissioners of any county in this state of North Dakota is hereby authorized to erect a memorial or memorials, or other suitable recognition in commemoration of the people of the county who rendered services, or who lost their lives in the service of their country during World War I and World War II or during the Korean hostilities, or solely during World War II, Such memorial, or memorials, or other suitable recognition shall be erected with in the county at a place determined upon by such board and when erected shall be properly and permanently maintained." (Emphasis supplied).

Section 11-3202 states:

The board of county commissioners, in carrying out the provisions of sections 1 and 2 hereof (11-3201, 11-3202), may join with a city, school district, or other public or private non-profit corporation or agency, or any or all of same, in the erection and operation of said memorial, or memorials, or other suitable recognition, in any proportion deemed advisable by said board." (Emphasis supplied).

From the reading of chapter 11-32 dealing with memorials, I get the distinct impression that the county commissioners must be concerned with and involved in the erection of an appropriate memorial. There is good reason for this and that is the practical necessity of having a new structure as an appropriate memorial for the persons who served their country. It goes without saying that the Legislature contemplated a new memorial and certainly did not have in mind the designation of an old building as an appropriate memorial even though it might be touched over and repaired here and there.

Of course, it is clear that the chapter gives the board of county commissioners wide discretion in the erection of these memorials, and I presume that if they were offered a new building by one of the county subdivisions such as a school district, city or township as a

memorial conditioned upon the addition of some funds from the county memorial fund that the commissioners would not be criticized for joining in the completion of the building as a suitable memorial. However, the county commissioners could not be justified under these statutes for trying to rebuild or complete an old or unsatisfactory building just because it happened to be there.

Therefore, it is the opinion of this office that chapter 11-32 entitled Memorials of the 1957 Supplement to the N.D.R.C. of 1943 contemplates that the commissioners shall be responsible for the erection of a suitable memorial either entirely as a county structure, or in conjunction with a city, school district or other public or private non-profit corporation or agency for the use and benefit of said corporation. Further, it is our opinion that the county commissioners, by virtue of the wide powers given to them through this chapter, could in the exercise of sound discretion expend money from the memorial fund for the completion of a new building already partly constructed by a school district or other subdivision if the plans and construction up to that point met with the approval of the board of county commissioners.

LESLIE R. BURGUM

Attorney General